UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Orlando Ira Brown, Plaintiff, v. State of South Carolina, Defendant.	)	C/A No.: 3:18-1195-MBS **ORDER AND OPINION**

On May 2, 2018, Plaintiff Orlando Ira Brown, proceeding *pro se* and *in forma pauperis*, brought this action alleging discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq*. ECF No. 1. On that same day, Plaintiff also filed a Motion for Summary Judgment. ECF No. 6. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling.

Plaintiff asserts that he is disabled. ECF No. 1-1 at 2. According to an order from the Probate Court issued on June 13, 2013, Plaintiff was required to abstain from drugs and alcohol as conditions of his treatment. ECF No. 1-1 at 1. Plaintiff contends that alcohol consumption is a civil liberty shared by all American over the age of 21, and that the court's denial of that liberty, based on his disability, is discriminatory and violates the ADA. ECF No. 6. To support his claim, Plaintiff relies on 42 U.S.C § 12132 of the ADA, which states, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

discrimination by any such entity." Plaintiff seeks a compensatory damage award of $500 million. ECF No. 1 at 5.

On May 22, 2018, the Magistrate Judge issued a Report and Recommendation ("Report") recommending that Plaintiff's Complaint be summarily dismissed without prejudice and without issuance and service of process. ECF No. 11 at 3. The Magistrate Judge notes that § 12131 bars states from discriminating against the disabled by excluding them from participation in, or denying them benefits to, *public programs and services*. *Id.* (emphasis added). According to the Magistrate Judge, Plaintiff's claim regarding private consumption of alcohol is based on a personal activity, not a public program or service, and thus is not a cognizable claim under the ADA. *Id.*

Plaintiff timely filed his objections to the Report. ECF No. 14. Plaintiff makes two assertions. First, he claims that "[p]ersonal activity of alcohol consumption is a benefit of the public program of permitting and guaranteeing personal activity of alcohol as a civil right." *Id.* at 1. Second, Plaintiff asserts that "[t]he 21st Amendment . . . along with state laws, are governmental works, which qualifies the choice to participate in personal activity of alcohol consumption, as a benefit of said service." *Id*. Thus, Plaintiff concludes, he has asserted a cognizable claim under the ADA.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court reviews *de novo* only those portions of a Magistrate Judge's report and recommendation to which specific objections are filed, and reviews those portions which are not objected to—including those portions to which only "general and conclusory" objections have been made—for clear error. *Diamond v. Colonial*

Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Opriano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The court has thoroughly reviewed the record. The court finds that Plaintiff's objections are meritless. Plaintiff has failed to state a claim for discrimination under the ADA. Thus, the court concurs in the Report and Recommendation and incorporates it herein by reference. Plaintiff's Complaint is summarily dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
The Hon. Margaret B. Seymour
Senior United States District Court Judge

June 28, 2018
Columbia, South Carolina